

SERVICE DATE - MARCH 17, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-290 (Sub-No. 232X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
FAYETTE COUNTY, WV

Decided: March 12, 2004

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 2.8-mile line of railroad between milepost OH-0.0 at Oak Hill and milepost OH-2.8 at Carlisle, in Fayette County, WV. Notice of the exemption was served and published in the Federal Register on December 31, 2001 (66 FR 67628-29). The exemption became effective on January 31, 2002.¹

By a late-filed petition filed on February 23, 2004, Fayette County Commission (Fayette) requests the issuance of a notice of interim trail use (NITU) for the 2.8-mile line of railroad under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, and for a 180-day public use condition under 49 U.S.C. 10905,² in order to negotiate with NSR for acquisition of the right-of-way for use as a recreational trail.³ Fayette also requests that NSR be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that NSR be barred from removing or destroying any trail-related

¹ By decision served on January 30, 2002, the exemption was made subject to the condition that NSR maintain the rail line and keep railroad-related structures intact and unaltered until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

² In an environmental assessment served on January 4, 2002, the Board's Section of Environmental Analysis indicated that the right-of-way may be suitable for other public use following abandonment.

³ The December 31, 2001 notice provided that trail use/rail banking requests were to be filed by January 10, 2002, and that requests for public use conditions were to be filed by January 22, 2002. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that Fayette's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. Fayette submitted a statement of willingness to assume financial responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By facsimile filed on February 24, 2004, NSR advised the Board that the section 106 process has not yet been completed, that it has therefore not consummated abandonment of the line, and that it is willing to negotiate with Fayette for possible trail use of the line.

Inasmuch as Fayette has not consummated the abandonment and is willing to negotiate with Fayette for trail use, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NSR may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

Fayette's request for a public use condition, however, will be denied. Under 49 U.S.C. 10905 and 49 CFR 1152.28(b), the Board cannot impose a public use condition beyond a 180-day period after the effective date of the decision (here December 31, 2001). That period ended on June 29, 2002.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The late-filed request for a NITU under 16 U.S.C. 1247(d) and for a public use condition under 49 U.S.C. 10905 is accepted.
3. Upon reconsideration, the decision served on December 31, 2001, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice, until September 13, 2004.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which

case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by September 13, 2004, interim trail use may be implemented. If no agreement is reached by that time, NSR may fully abandon the line, provided that the historic preservation condition imposed in the January 30, 2002 decision is met. See 49 CFR 1152.29(d)(1).

8. Fayette's request for a public use condition is denied.

9. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary